

## Message Text

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15

ACTION L-03

INFO OCT-01 IO-14 ISO-00 AF-10 ARA-16 EA-11 EUR-25 NEA-14

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FM USMISSION GENEVA

TO SECSTATE WASHDC 5583

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C O N F I D E N T I A L GENEVA 3049

E.O. 11652: GDS

TAGS: TSPA, PFOR, UN

SUBJECT: OUTER SPACE LEGAL: REGISTRATION CONVENTION

REF: GENEVA 3010 AND 2972

1. SUMMARY: UNDISCLOSED NUMBER OF PRO-MARKING CO-SPONSORS OF 6-POWER PROPOSAL 15 MAY INFORMALLY CIRCULATED AN "ANONYMOUS TEXT" ON MARKING AND THE REVIEW CLAUSE WHICH US DEL, FOR REASONS SET FORTH BELOW, STATED WAS NON-STARTER. CANADA ORALLY PROPOSED DEALING WITH MARKING BY ADDING TO THE AGREED DRAFT REVIEW CLAUSE. AGAIN, FOR VARIETY OF REASONS, US DEL DESCRIBED THIS PROPOSAL AS NOT ACCEPTABLE.

2. DETAILS. SIX COSPONSORS OF THE GENEVA 2972 PARA 2 MARKING ARTICLE APPARENTLY AGREED TO PUT FORWARD WITHOUT ASCRIPTION A SUBSTITUTE PROPOSAL. THEY DID SO AT 15 MAY MEETING IN FOLLOWING TERMS:

(A) IN CURRENT CANADIAN MARKING TEXT (GENEVA 3010, PARA 7), THEY WOULD ADD THE WORD "NOT", WITH THE RESULT THAT WHENEVER A SPACE OBJECT WERE NOT RPT NOT MARKED, THE STATE OF REGISTRY WOULD BE REQUIRED TO REPORT THAT FACT;

(B) TO ART VIII BIS REVIEW CLAUSE, THEY WOULD ADD AN ADDITIONAL SENTENCE READING "SUCH REVIEW SHALL TAKE INTO  
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ACCOUNT IN PARTICULAR THE QUESTION OF THE EFFECTIVENESS

OF THE SYSTEM OF MARKING ESTABLISHED IN ARTICLE III BIS  
AND ANY RELEVANT TECHNOLOGICAL DEVELOPMENTS."

3. US SAID REQUIREMENT TO REPORT A FACT OF NON-MARKING  
WAS UNACCEPTABLE. SUCH A REPORT WOULD BE WITHOUT PURPOSE,  
AND MOREOVER, WOULD SEEM TO CONSTITUTE SOME KIND OF AD-  
MISSION THAT A STATE OF REGISTRY HAD FAILED TO FULFILL  
AN OBLIGATION OR HAD COMMITTED SIN. FURTHER, REFERENCE  
IN THE PROPOSED ADDITION TO THE REVIEW CLAUSE WOULD UN-  
BALANCE THE REG CON BECAUSE IT ASSERTED  
THAT THE CONVENTION ESTABLISHED A "SYSTEM OF MARKING"  
WHOSE "EFFECTIVENESS" WAS TO BE A FOCUS OF CONCERN.

4. MORE FUNDAMENTALLY, US DEL SAID WE WERE DEEPLY  
TROUBLED BY UNWILLINGNESS OF MANY LEGAL SUBCOMMITTEE  
MEMBERS TO DEAL WITH REALITY OF NEGOTIATING SITUATION.  
THERE APPARENTLY EXIST FUNDAMENTAL DIFFERENCES IN STATES'  
VIEWS ON NECESSITY AND DESIRABILITY OF MARKING, AND IF  
THOSE VIEWS CANNOT HONESTLY BE RECONCILED, THEN WE MUST  
ADDRESS THEM REALISTICALLY AND NOT PRETEND THEY DO NOT  
EXIST. HERE WE HAVE SO FAR A REALITY OF NON-AGREEMENT, AND  
HENCE WE MAY HAVE TO RECOGNIZE THAT NO REGISTRATION TREATY  
IS POSSIBLE IF THESE MARKING PROVISIONS ARE INSISTED UPON.  
A MULTIPLICITY OF DRAFTS WILL NOT CURE A BASIC SUB-  
STANTIVE DIFFERENCE. IN REPLY, BRAZIL STATED ITS OWN  
CONCERN ABOUT RECENT LSC PRACTICE REGARDING THE CONSENSUS  
RULE. THAT RULE, BRAZIL SAID, WAS NOT INTENDED TO ALLOW  
ANY SINGLE DELEGATION TO VETO PROPOSALS, BUT RATHER TO  
INDUCE DELEGATIONS TO NEGOTIATE AND TO REACH COMPROMISES.  
IT SHOULD NOT ENCOURAGE STATES TO RETRENCH AND HOLD  
ORIGINAL POSITIONS.

5. US DEL SUGGESTED THAT THE ONLY POSSIBILITY OF CON-  
CLUDING THE CONVENTION WOULD BE TO AGREE TO DISAGREE ON  
MARKING AND EXCLUDE MARKING PROVISIONS FROM THE TEXT.  
MEXICO LATER EXPRESSED VIEW THAT QUESTION IS APPARENTLY  
NOT WHETHER TO INCLUDE A MARKING PROVISION; QUESTION IS  
MORE PRECISELY WHETHER TO HAVE A CONVENTION  
WITHOUT A MANDATORY MARKING PROVISION OR NOT TO HAVE A  
CONVENTION AT ALL.  
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6. CANADA SAID IT WAS NOT SURPRISED TO HEAR US DEL OPPO-  
SITION IN VIEW OF LONGSTANDING AND OFTEN-STATED US  
POSITION. CANADIAN REP REGRETTED HE HAD NOT BEEN ASKED  
TO PARTICIPATE WITH 6 CO-SPONSORS IN DRAFTING "ANONYMOUS  
TEXT" NUMBER TWO, SINCE HE MIGHT, HE THOUGHT, HAVE HELPED  
DRAFT A REVIEW CLAUSE ADDITION WHICH COULD HAVE PROVED  
ACCEPTABLE. HE THEN PROPOSED FOLLOWING "NEUTRAL" AD-

DITION TO REVIEW CLAUSE: "SUCH REVIEW SHALL TAKE INTO ACCOUNT IN PARTICULAR ANY RELEVANT TECHNOLOGICAL DEVELOPMENTS, INCLUDING THOSE DEVELOPMENTS RELATING TO THE EFFECTIVENESS OF THE MARKING OF SPACE OBJECTS REFERRED TO IN ARTICLE III." US SAID CANADIAN PROPOSAL WOULD CAUSE GRAVE DIFFICULTIES BECAUSE IT WOULD UNBALANCE THE CURRENT REVIEW CLAUSE WHICH CONTAINS NO SPECIFIC SUGGESTIONS AS TO THE PURPOSES OF A REVIEW CONFERENCE IF, AFTER THE REQUIRED PERIOD, THE PARTIES DECIDED TO EXERCISE THEIR OPTION TO SEEK ONE. THE CANADIAN ORAL DRAFT WOULD EXPRESS IN CONCRETE TERMS IN THE CONVENTION THE DISAPPOINTMENT OF THOSE FAVORING MARKING AS TO THEIR INABILITY TO HAVE OBTAINED AGREEMENT ON MARKING.

7. COMMENT: WE MADE THIS STATEMENT NOT SO MUCH BECAUSE THE CANADIAN ORAL DRAFT IS PREJUDICIAL (IT IS PROBABLY CORRECTABLE THROUGH DRAFTING CHANGES) BUT BECAUSE WE HAVE BECOME CONCERNED THAT CANADIAN STATEMENTS ON REGISTRATION MAY BE TAKEN BY OTHER PARTICIPANTS AS REPRESENTING WHAT THE US CAN ACCEPT, WITH CONSEQUENCE OF OUR BEING FACED WITH NEGOTIATING DOWNWARDS FROM CANADIAN VIEWS. WE BELIEVE CONSIDERATION COULD PROPERLY BE GIVEN TO STATING THAT WE CONSIDER AS SATISFACTORY THE STATEMENT IN THE REVIEW CLAUSE PRINTED IN 1973 OUTER SPACE COMMITTEE REPORT, PAGE 42, WHICH PROVIDES ONLY THAT "SUCH REVIEW SHALL TAKE INTO ACCOUNT IN PARTICULAR ANY RELEVANT TECHNOLOGICAL DEVELOPMENTS". THIS SUBSTANTIALLY DUPLICATES THE SECOND SENTENCE OF ARTICLE VII OF THE SEABEDS DENUCLEARIZATION TREATY AND WOULD CLOSELY PARALLEL THE LAST SENTENCE OF ARTICLE XII OF THE BW CONVENTION (WHICH STATES THAT "SUCH REVIEW SHALL TAKE INTO ACCOUNT ANY NEW SCIENTIFIC AND TECHNOLOGICAL DEVELOPMENTS RELEVANT TO THE CONVENTION."). HOWEVER, CONFIDENTIAL

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FAILURE TO OBJECT TO THE CANADIAN ORAL PROPOSAL TODAY COULD HAVE LED TO NEGOTIATIONS STARTING OFF FROM A POINT TOO FAR REMOVED FROM AN EVENTUAL AD REFERENDUM CONCLUSION WHOSE ACCEPTANCE WE MIGHT WANT TO RECOMMEND TO WASHINGTON.

8. WORKING GROUP IS PLAINLY DISMAYED BY STRONG LINE BEING TAKEN BY US DEL. THERE MAY BE INFORMAL DISCUSSIONS MAY 16 AM; 15 MAY SESSION CONCLUDED WITH SURPRISINGLY HELPFUL PLEA BY MEXICAN DELEGATE THAT CURRENT IMPASSE NOT BE PERMITTED TO DESTROY POSSIBILITY OF CONCLUDING AN ACCEPTABLE SATISFACTORY REG CON.

9. FURTHER COMMENT: THE APPEARANCE OF NEW 6-POWER PROPOSALS AS "ANONYMOUS TEXT" IS NOT UNHELPFUL DEVELOPMENT SINCE THEIR PRESTIGE IS NOT DIRECTLY TIED TO SUCH

TEXTS AND THEY MAY THUS IN DUE COURSE CONCEIVABLY FEEL  
THE FREER TO MAKE SOME REASONABLE ACCOMMODATION TO OUR  
POSITIONS.ABRAMS

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## Message Attributes

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**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** SPACE LAW, AGREEMENT DRAFT, MEETING AGENDA, COMMITTEE MEETINGS  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 15 MAY 1974  
**Decaption Date:** 01 JAN 1960  
**Decaption Note:**  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Authority:** GarlanWA  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 28 MAY 2004  
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